LEGAL SERVICES CORPORATION
3333 K Street, NW 3rd Floor
Washington, D.C. 20007-3522

In re	*
	*
Mississippi Center for Legal Services	*
(Recipient No. 619010)	*
	*
Chair: Michael Adelman	*
Executive Director: Sam H. Buchanan, Jr.	*
	*
Notice of Questioned Costs:	*
Dated February 15, 2013	*
	*
Management Decision:	*
Dated August 23, 2013	*

MANAGEMENT DECISION

The Legal Services Corporation ("LSC") herby gives notice to the Mississippi Center for Legal Services ("MCLS") that LSC has determined that certain expenditures incurred by MCLS, amounting to $21,424.35, in connection with violations of 45 CFR Parts 1604 and 1635 by two MCLS full-time attorneys during the time period 2009 – 2011, that previously had been noticed to be potentially questionable, are disallowed. LSC's decision to disallow these costs and the rational for that decision are provided below.

Background and Procedural History

MCLS is a non-profit corporation, a law firm, which provides legal assistance to low-income persons throughout 43 counties in the southern half of Mississippi. It receives federal funds from LSC for this purpose, subject to the requirements, restrictions, and prohibitions of the LSC Act and its implementing regulations. The LSC Act restricts full-time attorneys who work for organizations funded with an LSC grant from engaging in the outside practice of law.

Subsequent appropriations legislation further required these attorneys to keep track of time spent on all cases, matters, and other activities.

On February 15, 2013, LSC issued a Notice of Questioned Costs ("Notice") indicating that $21,424.35 in expenditures incurred by MCLS were questioned as allowable costs under the provisions of 45 C.F.R. Part 1630. Briefly, it had been determined that during the period 2009 to 2011, two MCLS full time attorneys, Marcus Pittman the managing attorney of the Gulfport Office of MCLS from 2004 until his termination in 2011 and Arthur Hewitt a staff attorney in the same office, engaged in active outside practices of law. These facts were initially discovered by the LSC Office of Inspector General ("OIG") as part of an on-site investigation which took place in October 2011. The OIG determined that Mr. Pittman had been involved in the outside practice of law on at least 59 days and Mr. Hewitt had been involved in the outside practice of law on about 36 days. Based on calculations explained in the Notice, it was determined that the value of the days in which Mr. Pittman was operating his outside practice was $14,337.65 and the value of the days that Mr. Hewitt was operating his outside practice was $7,086.70. *See* Notice of Questioned Costs.

MCLS responded to the Notice of Questioned Costs on March 28, 2013 ("Response") and LSC issued an Interim Management Decision on May 17, 2013. A copy of the Interim Management Decision is attached to this Decision and the findings and conclusions are incorporated herein. In that Interim Management Decision, LSC considered the Notice and the information provided in MCLS' Response and determined the record demonstrated that the two attorneys employed by MCLS violated the restriction on the outside practice of law and that

MCLS failed to ensure these attorneys properly kept track of their time. The total of the costs deemed unallowable was $21,424.35. In addition, MCLS' request to set aside the questioned costs due to equitable, practical, and other reasons was denied. *See* Interim Management Decision at 2. MCLS' request to reduce the amount recovered based on an over-estimate of costs expended on the outside practice of law was tolled in order for MCLS to provide time records demonstrating the basis for the assertion of an over-estimate. *See* Interim Management Decision at 3. LSC's response to that request and the basis for its decision are provided in this final Management Decision... A third request - to apportion the recoupment of the denied cost of the remaining grant year - was granted. *See* Interim Management Decision at 4.

Of particular import, is that the Interim Decision granted an enlargement of time to allow MCLS an opportunity to supplement the record by providing a record of the known time spent on actual programmatic activities - cases, matters, and other activities – in order to provide a basis for LSC to remove those activities from the assessed questioned costs. However, MCLS subsequently indicated that it does not have the required time records from either attorney which would distinguish between allowable and unallowable costs for the days in which these attorneys were engaged in the outside practice of law. Therefore, it is unable to provide an accounting of allowable costs for the days in question. Accordingly, there is no basis for paring back any of the costs which are being questioned.

The regulations of LSC are quite clear – the two attorneys in question were required to keep time and their failure to do so is a violation of the regulations. The failure to keep contemporaneous time records was a violation of 45 C.F.R. § 1635.3(b), which requires that all

time spent by attorneys be documented in the manner detailed in the regulation. In the past, LSC has questioned the entire salary paid to an Executive Director due to his failure to keep time records. *See* the Final Decision of the LSC President *In Re: Capital Area Legal Services Corporation* (March 23, 2011) attached to this Decision. In that case, the Management Decision disallowed the entirety of the former Executive Director's salary for the period 2006-2009 – a total of $485,000. Upon appeal to the LSC President, the President agreed that failure to keep time records meant that the salary costs would be disallowed, although in an exercise of his 1630.7(f) discretion, he allowed the cost of one-third of this expenditure.

Decision

Accordingly, because MCLS did not require its managing attorney and staff attorney to maintain time records for the days in which they were engaged in the outside practice of law, there is no basis for reducing the amount questioned. It is therefore ordered that the costs questioned, totaling $21,424.35, are disallowed and will be recovered, in equal amounts from MCLS' remaining grant checks for 2013.

Dated: August 23, 2013

LEGAL SERVICES CORPORATION

William Sulik, Program Counsel
Office of Compliance and Enforcement

BY: Lynn A. Jennings, Vice President
Office of Grants Management

APPENDICES

Appendix A: Notice of Questioned Costs (February 15, 2013)
Appendix B: Interim Management Decision (June 11, 2013)
Appendix C: Final Decision of the LSC President *In Re: Capital Area Legal Services Corporation* (March 23, 2011)

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On February 15, 2013, LSC issued a Notice of Questioned Costs ("Notice") indicating that $21,424.35 in expenditures incurred by MCLS were questioned as allowable costs under the provisions of 45 C.F.R. Part 1630. Briefly, it had been determined that during the period 2009 to 2011, two MCLS full time attorneys, Marcus Pittman the managing attorney of the Gulfport Office of MCLS from 2004 until his termination in 2011 and Arthur Hewitt a staff attorney in the same office, engaged in active outside practices of law. These facts were initially discovered by the LSC Office of Inspector General ("OIG") as part of an on-site investigation which took place in October 2011. The OIG determined that Mr. Pittman had been involved in the outside practice of law on at least 59 days and Mr. Hewitt had been involved in the outside practice of law on about 36 days. Based on calculations explained in the Notice, it was determined that the value of the days in which Mr. Pittman was operating his outside practice was $14,337.65 and the value of the days that Mr. Hewitt was operating his outside practice was $7,086.70. *See* Notice of Questioned Costs.

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MCLS failed to ensure these attorneys properly kept track of their time. The total of the costs deemed unallowable was $21,424.35. In addition, MCLS' request to set aside the questioned costs due to equitable, practical, and other reasons was denied. *See* Interim Management Decision at 2. MCLS' request to reduce the amount recovered based on an over-estimate of costs expended on the outside practice of law was tolled in order for MCLS to provide time records demonstrating the basis for the assertion of an over-estimate. *See* Interim Management Decision at 3. LSC's response to that request and the basis for its decision are provided in this final Management Decision. A third request - to apportion the recoupment of the denied cost of the remaining grant year - was granted. *See* Interim Management Decision at 4.

Of particular import, is that the Interim Decision granted an enlargement of time to allow MCLS an opportunity to supplement the record by providing a record of the known time spent on actual programmatic activities - cases, matters, and other activities – in order to provide a basis for LSC to remove those activities from the assessed questioned costs. However, MCLS subsequently indicated that it does not have the required time records from either attorney which would distinguish between allowable and unallowable costs for the days in which these attorneys were engaged in the outside practice of law. Therefore, it is unable to provide an accounting of allowable costs for the days in question. *See* MCLS response dated July 1, 2013. Accordingly, there is no basis for paring back any of the costs which are being questioned.

The regulations of LSC are quite clear – the two attorneys in question were required to keep time and their failure to do so is a violation of the regulations. The failure to keep contemporaneous time records was a violation of 45 C.F.R. § 1635.3(b), which requires that all

time spent by attorneys be documented in the manner detailed in the regulation. In the past, LSC has questioned the entire salary paid to an Executive Director due to his failure to keep time records. *See* the Final Decision of the LSC President *In Re: Capital Area Legal Services Corporation* (March 23, 2011) attached to this Decision. In that case, the Management Decision disallowed the entirety of the former Executive Director's salary for the period 2006-2009 – a total of $485,000. Upon appeal to the LSC President, the President agreed that failure to keep time records meant that the salary costs would be disallowed, although in an exercise of his 1630.7(f) discretion, he allowed the cost of one-third of this expenditure.

Decision

Accordingly, because MCLS did not require its managing attorney and staff attorney to maintain time records for the days in which they were engaged in the outside practice of law, there is no basis for reducing the amount questioned. It is therefore ordered that the costs questioned, totaling $21,424.35, are disallowed and will be recovered, in equal amounts from MCLS' remaining grant checks for 2013.

Dated: August 23, 2013

LEGAL SERVICES CORPORATION

BY: William Sulik, Program Counsel
Office of Compliance and Enforcement

BY: Lynn A. Jennings, Vice President
Office of Grants Management

APPENDICES

Appendix A:	Notice of Questioned Costs (February 15, 2013)
Appendix B:	Interim Management Decision (June 11, 2013)
Appendix C:	MCLS Response (July 1, 2013)
Appendix D:	Final Decision of the LSC President *In Re: Capital Area Legal Services Corporation* (March 23, 2011)

APPENDIX A

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Mississippi Center for Legal Services	*
(Recipient No. 619010)	*
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Chair:	*
Executive Director: Sam H. Buchanan, Jr.	*
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(Notice of Questioned Costs:	*
Dated February 15, 2013)	*

NOTICE OF QUESTIONED COSTS

The Legal Services Corporation ("LSC" or "Corporation") hereby gives notice to Mississippi Center for Legal Services ("MCLS")[1] that certain expenditures incurred by MCLS, amounting to $21,424.35 are questioned as allowable costs under the provisions of 45 C.F.R. Part 1630.

INTRODUCTION AND OVERVIEW

As a result of a complaint investigation by the LSC Office of Inspector General ("OIG"), on April 17, 2012, the OIG referred to LSC Management two (2) Reports of Investigation, each of which determined that an attorney employed by MCLS in the Gulfport office represented clients in the outside practice of law in violation of 45 C.F.R. Part 1604. Each report discussed a separate attorney. In addition, both attorneys failed to account for their required timekeeping in violation of 45 C.F.R. Part 1635. As a result, resources provided for the representation of LSC

[1] While the Report issued by the LSC Office of the Inspector General uses the acronym MCLSC, or Mississippi Center for Legal Services Corporation, the recipient uses MCLS as its acronym. Accordingly, this Notice will also use the acronym MCLS unless directly quoting from a document which uses MCLSC.

eligible clients were used to provide representation to non-qualified private clients. Pursuant to LSC Management's standard operating procedures, both reports were sent to the LSC Office of Compliance and Enforcement ("OCE") for an appropriate response. *See* Appendix A.[2]

By letter dated April 27, 2012, the OCE forwarded copies of the reports to MCLS for its comments and asked for additional information. *See* Appendix B. On June 15, 2012, MCLS responded, acknowledging it concurred with the OIG findings, for the most part; indeed, it actively assisted the OIG in its investigation.

After considering the OIG's referral and the information provided by MCLS, for the reasons set forth below, LSC has decided to question the costs which we believe are inconsistent with 45 C.F.R. Part 1630.

The following chart breaks down the amounts which LSC is questioning:

Description	Amount
Outside practice of law by the Gulfport Managing Attorney, Marcus Pittman.	$14,337.65
Outside practice of law by Gulfport Staff Attorney, Arthur Hewitt.	$7,086.70
Total	**$21,424.35**

[2] It appears that in the preparation of the OIG report, the numbers on the OIG exhibits were transposed. Accordingly, although the OIG Report for Mr. Marcus Pittman is labeled 11-018, the exhibits for the Pittman referral are labeled 11-024. Similarly, although the OIG report for Mr. Arthur Hewitt is labeled 11-024, the exhibits for the Hewitt referral are labeled 11-018. As noted below, to avoid the confusion, this Notice will refer to these as the Pittman ROI and the Hewitt ROI and the exhibits will be identified either as the Pittman Exhibits or the Hewitt Exhibits.

STATEMENT OF FACTS

A. Parties

1. LSC is a congressionally funded, private, non-membership, nonprofit corporation, organized under the laws of the District of Columbia. Established by the Legal Services Corporation Act of 1974, 42 U.S.C. §§ 2996 *et seq.*, as amended, H.R. 6666, Pub. L. 95-222 (December 28, 1977) (the "LSC Act"), LSC is authorized, among other things, to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, to make grants to and contracts with other entities for the purpose of providing legal assistance to clients eligible for legal assistance under the LSC Act, and to make such other grants and contracts as are necessary to carry out the purposes and provisions of the LSC Act. *See* 42 U.S.C. § 2996e(a)(1). LSC also has authority to ensure that its grant recipients comply with the provisions of the LSC Act and the rules, regulations, and guidelines promulgated by LSC pursuant to the LSC Act. *See* 42 U.S.C. § 2996e(b)(1(A). All LSC grants and contracts are made subject to the provisions, requirements, restrictions, and limitations contained in the LSC Act, applicable appropriations acts and other applicable laws, the regulations promulgated by LSC, and such other rules, policies, guidelines, instructions and directives issued by LSC.

2. MCLS is a nonprofit corporation existing under the laws of Mississippi with its main office in Hattiesburg, Mississippi. At all times relevant hereto, MCLS received annual grants from LSC for the sole purpose of providing legal assistance to persons eligible for legal assistance under the LSC Act residing in 43 counties which include: Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds,

Holmes, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Noxubee, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo counties. In 2008, MCLS received an LSC grant for Basic Field Funding in the amount of $2,912,397; in 2009, it received $3,205,135; in 2010, it received $3,460,708; in 2011, it received 3,317,650, and in 2012 it received a grant of $2,831,290. For calendar year 2013, it has been approved for a grant of $2,845,351, although this may be altered by future Congressional Appropriations. At all times relevant hereto, MCLS agreed, in writing, to comply with the requirements of the LSC Act, applicable appropriations acts and other applicable laws, the regulations promulgated by LSC, and such other rules, policies, guidelines, instructions and directives issued by LSC, including, but not limited to, the requirements in the Accounting Guide for LSC Recipients ("LSC Accounting Guide"), the LSC Property Acquisition and Management Manual ("PAMM"), and 45 C.F.R. Parts 1604, 1630, and 1635.

B. Statutory and Regulatory Authority

3. The LSC Act, at Section 1007(a)(4), provides, in relevant part:

> The Corporation shall…insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law and (B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation.

Accordingly, LSC has adopted regulations implementing this restriction, which are set forth at 45 C.F.R. Part 1604, and were most recently revised in 2003.

4. Since 1980, LSC has not been reauthorized, except through annual funding legislation. Through this legislation, the provisions set forth in the LSC Act have been continued to be applied to LSC and its funding recipients. The most recent legislation, for Fiscal Year 2012, is set forth in the *Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012*, which appears in Division B of Public Law 112-55, the *Consolidated and Further Continuing Appropriations Act*, 2012.

5. The Fiscal Year 2012 legislation incorporates, by reference, additional provisions from earlier appropriations legislation, most significant of which for these purposes are the restrictions contained in the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321; H.R. 3019; April 26, 1996. Included in the 1996 provisions is the requirement that recipients of LSC funds ensure that their employees keep time records. *See* § 504(a)(10)(A) ("prior to receiving the financial assistance, such person or entity agrees to maintain records of time spent on each case or matter with respect to which the person or entity is engaged"). This requirement has been implemented by 45 C.F.R. Part 1635, which was most recently revised in July 2000.

C. Allegation and Investigation

6. On or about May 9, 2011, the LSC OIG received a complaint from an anonymous complainant which indicated that the Managing Attorney of MCLS' Gulfport Office, Marcus Pittman, and Staff Attorney, Arthur Hewitt, were involved in the outside practice of law in violation of the LSC Act and regulations. According to the complainant, both attorneys solicited

legal work from applicants after they were rejected for legal assistance by MCLS, they required clients to pay for services in cash, and that the majority of the cases were domestic relations matters. *See* Appendix A.

7. As a result of this complaint, the OIG opened an investigation of MCLS and conducted an on-site investigation during the week of October 24 through 28, 2011.

8. Based on this investigation, the OIG prepared two (2) Reports of Investigation ("ROI") which are attached to this Notice as Appendix A. Each ROI includes five (5) Exhibits.

9. The two (2) ROIs were submitted to LSC Management on April 17, 2012, as noted by the cover memorandum set forth at the beginning of Appendix A. For purposes of this proceeding, unless otherwise noted, both ROIs, the cover memorandum, and the separate exhibits will be collectively referred to as "the ROI." When addressing the separate ROIs, for ease of reference this notice will refer to either the "Pittman ROI" or the "Hewitt ROI." When addressing the exhibits separately, the notice will refer to the specific exhibit by the particular ROI and its number; for example, the first exhibit from the Pittman ROI will be "Exhibit 1, Pittman ROI."

10. The ROIs were forwarded to the Executive Director of MCLS on April 27, 2012 for response and also to seek additional information. The letter forwarding this is attached as Appendix B.

11. On June 15, 2012, the Executive Director of MCLS responded both to the ROI and to OCE's request for information. The letter of response is attached as Appendix C.

FINDINGS

D. The Managing Attorney of the MCLS Gulfport Office, Marcus Pittman, during the period 2009 through and including 2011, engaged in the persistent outside practice of law in violation of the LSC Act and regulations.

12. Prior to 2004, Marcus Pittman worked for South East Mississippi Legal Services ("SEMLS"), a now-defunct LSC grantee. After a period of consolidation and reorganization, in 2004, several LSC recipients, including SEMLS, merged to form MCLS the current LSC grantee for the area which includes the Gulfport service area. At that time, Mr. Pittman became the Managing Attorney of the MCLS Gulfport Office. In this capacity, he was employed by MCLS in a full-time capacity and his legal assistance activities were supported in major part by LSC funding.

13. During the investigation of MCLS Managing Attorney Pittman, the OIG determined that he "(1) accepted compensated civil cases from non-MCLSC clients; (2) accepted uncompensated civil case for persons who were not close friends, family member, religious or charitable groups; (3) accepted compensated court-appointed Guardian Ad-Litem cases; (4) included MCLSC's name and address on pleadings for non-MCLSC clients; (5) did not remit to MCLSC attorney's fees earned as a court appointed attorney; and (7)[*sic*] served as a compensated court appointed Jackson County Divorce Master." Appendix A, Pittman ROI at 2.

14. Pursuant to 42 U.S.C. § 2996f(a)(4), as implemented by 45 C.F.R. Part 1604, MCLS has adopted an outside law practice policy for full-time attorneys. As will be discussed

more fully below, all full-time staff attorneys are required to abide by the LSC regulations governing the outside practice of law.

15. As noted by the OIG, "MCLSC's policy also imposes stricter restrictions [than the LSC regulations] and requires full time staff attorneys to seek permission for any outside employment not just legal employment. In 2009 MCLSC revised its staff handbook, which included MCLSC's policy regarding the procedures and requirements to engage in an outside employment. MCLSC did not revise its outside employment policy; however, each member of MCLSC's staff was required to sign a statement of acknowledgment of receipt and basic understanding of the handbook. After numerous reminders to do so, Pittman signed the statement almost two years later on March 18, 2011. The policy was in effect at MCLSC during all relevant time periods of the investigation." Appendix A, Pittman ROI at pp. 2-3.

16. Whereas LSC regulations require MCLS attorneys to seek permission to engage in the outside practice of law on behalf of a client, the MCLS Outside Employment Policy requires permission to seek any employment in addition to an employee's regular, full-time job with MCLSC. The policy states that permanent full-time employees shall not engage in outside employment without prior written notice given to the Executive Director and all employees shall comply with LSC regulation 45 C.F.R. Part 1604. Based on its investigation, the OIG determined "that Pittman never requested permission to assist private clients in civil matters, to accept court-appointed Guardian Ad-Litem cases or to accept a position as a Divorce Master." Appendix A, Pittman ROI at 3.

17. During the investigation, the OIG compared case lists from two (2) of the county courts in the Gulfport service area (Harrison and Jackson counties) with Mr. Pittman's 2009 and 2010 closed MCLSC case lists and 2011 open and closed MCLS case lists. This comparison disclosed that Mr. Pittman entered his name as attorney of record during the period from the beginning of 2009 through July 23, 2011 on 20 cases that were not in MCLSC's case management system. The cases were all domestic civil cases with the most recent occurring in April 2011 when Mr. Pittman was assigned by the Jackson County Chancery court as a Guardian Ad-Litem. Appendix A, Pittman ROI at 3.

18. During the period 2009 to the end of 2011, Mr. Pittman did not request permission for any outside practice of law or for any outside employment. The OIG investigators found "[e]vidence obtained during the investigation revealed that Pittman never requested permission to assist private clients in civil matters, to accept court-appointed Guardian Ad-Litem cases or to accept a position as a Divorce Master." Moreover, Mr. Pittman acknowledged, and the MCLS Executive Director confirmed, that he did not seek permission to engage in this outside practice of law. Appendix A, Pittman ROI at 3.

19. During the period 2007 to 2010, Mr. Pittman served as a Divorce Master for the Jackson County Chancery Court without the knowledge or consent of the MCLS Executive Director. According to the ROI, "Divorce Masters are attorneys who are appointed by the courts and are assigned to help alleviate divorce case loads for judges. Divorce Masters administer preliminary divorce hearings and drafts orders which the presiding judge reviews before signing.

The hearings take place during court hours which are during MCLSC's office hours. The Divorce Masters are compensated for their time and service." Appendix A, Pittman ROI at 3.

20. The OIG investigation determined that during the period 2009 to 2011 Mr. Pittman received payments from the Jackson County Chancery Court clerk's office for work on Guardian ad Litem cases. The total amount received for this outside employment was $2,700. Appendix A, Pittman ROI at 4. [3]

21. In addition, the OIG investigation determined that Mr. Pittman received $450 from the Jackson County Chancery Court for services as a Divorce Master. Appendix A, Pittman ROI at 4.

22. It is not clear whether Mr. Pittman actually received compensation from private clients for representing them. The ROI noted the complainant alleged that Mr. Pittman required all private clients to pay cash for services; nevertheless, the ROI also states that Mr. Pittman "stated during his interview that he never received cash compensation from his private clients..." Moreover, the investigation disclosed that Mr. Pittman "received a payment of $750.00 in 2010 from Richard Freeman for assistance with a domestic issue." Appendix A, Pittman ROI at 4.

[3] The OIG ROI takes the position that service as a *Guardian Ad Litem* is part of the practice of law. Therefore, the OIG concludes: "As required by 45 C.F.R.§ 1604.7, the compensation earned for court appointed Guardian Ad-Litem cases are required to be remitted to MCLSC, which was not done by Hewitt." Nevertheless, there is not sufficient information in the ROI to conclude that this is actually the outside practice of law. It is the practice of the LSC to make this determination on a case-by-case basis depending on the local law. Among the factors reviewed is whether the *Guardian Ad Litem* is required to be an attorney licensed in the jurisdiction and whether the *Guardian Ad Litem* appointment is considered to be "provision of legal assistance to a client" pursuant to 45 C.F.R. § 1604.2(b). For purposes of this proceeding, it is sufficient that the OIG determined that a *Guardian Ad Litem* appointment is outside employment, it is not within program policies, and that program resources were used.

23. Mr. Pittman used the MCLS address on his private clients' pleadings. Both the LSC regulations, at 45 C.F.R. §1604.4(b), and the MCLS Outside Practice of Law policy prohibit the identification of the LSC recipient with the outside practice of law. Appendix A, Pittman ROI at 5.

24. Mr. Pittman used MCLS resources to deliver legal assistance to his private law clients. Specifically, the OIG found that Mr. Pittman did not take leave or document time to work on his private law clients.

24.1 During the period February 6, 2009 through November 20, 2009, the OIG found that Mr. Pittman represented 10 non-MCLS clients and appeared in court on at least 19 separate days for hearings or to file documents in Jackson County, Mississippi. Moreover, the OIG reviewed the MCLS time and case management system and found that out of these 19 days, Mr. Pittman requested leave on only one (1) day, August 17, 2009, for 3.5 hours. There is no evidence in the time records that extra hours were worked to attend the 19 appearances or to draft and file pleadings for his private law clients. Appendix A, Pittman ROI at pp. 6-7.

24.2 During the period January 12, 2010 through November 22, 2010, the OIG found that Mr. Pittman represented 12 clients and appeared in court on at least 23 days for hearings or to file documents in Jackson County, Mississippi. Moreover, the OIG reviewed the MCLS time and case management system and found that out of these 23 days, Mr. Pittman requested leave on only seven (7) of these days, for a total of 40 hours. The 40 hours requested included eight (8) hours of sabbatical leave; 10 hours of sick

leave; and 22 hours of annual leave. There is no indication in Pittman's 2010 time records that extra hours were worked to attend the 23 appearances or to draft and file pleadings for his private cases. Appendix A, Pittman ROI at pp. 6-7.

24.3 During the period February 2, 2011 through August 25, 2011, the OIG found that Mr. Pittman represented 10 clients and appeared in court on at least 17 days for hearings or to file documents in Jackson County, Mississippi. Moreover, the OIG reviewed the MCLS time and case management system and found that out of these 17 days, Mr. Pittman requested leave on only three (3) of the days, for a total of 18 hours. The 18 hours requested included two (2) hours of sick leave and 16 hours of annual leave. There is no indication in Pittman's 2011 time records that extra hours were worked to attend the 17 appearances or to draft and file pleadings for his private cases. Appendix A, Pittman ROI at pp. 6-7.

25. As a result of the ROI referral by the OIG, LSC Management, through OCE, asked MCLS whether it disputed the findings of the OIG and to provide a determination the cost of the resources used by Mr. Pittman. *See* Appendix B. MCLS replied on June 15, 2012 and stated "MCLS does not disagree with the findings of the OIG relative to each ROI on Attorney Marcus Pittman and Attorney Arthur Hewitt. MCLS assisted in some limited aspects of the investigation and MCLS has no additional information or reason to contradict the findings." *See* Appendix C. Additionally, as requested, MCLS provided a schedule of attorney time spent by Mr. Pittman on his outside practice. *See* Attachment to Appendix C. As noted in the letter of June 15, there is a discrepancy between the OIG findings of "78 appearances during this period

... which MCLS cannot reconcile based on the information it has available. MCLS' schedule and calculations are based on 59 days." Having reviewed this schedule and the OIG ROI, LSC accepts the MCLS schedule and its calculation of $14,337.65. The OIG did not compute or estimate the indirect costs or any other costs used to support the outside practice and LSC does not propose one.

E. The Managing Attorney of the MCLS Gulfport Office, Marcus Pittman, during the period 2009 through and including 2011, failed to properly record time in violation of LSC regulations.

26. In addition to the failure to comply with the MCLS Outside Practice of Law policy and the Outside Employment policy, Mr. Pittman also failed to properly record time on an accurate and contemporaneous basis to the MCLS case and time management system as required by 45 C.F.R. Part 1635. *See* Appendix A, Pittman ROI at pp. 5-7 and ¶¶ 24.1-24.3, above.

F. Arthur Hewitt, a Staff Attorney with the MCLS Gulfport Office, during the period 2009 through and including 2011, engaged in the persistent outside practice of law in violation of the LSC Act and regulations.

27. According to the OIG, Arthur Hewitt came to MCLS from private practice eight (8) years prior to the on-site investigation, or about 2004. At that time and until the end of 2011, Mr. Hewitt was a Staff Attorney in the MCLS Gulfport Office. In this capacity, he was employed

by MCLS in a full-time capacity and his legal assistance activities were supported in major part by LSC funding. Appendix A, Hewitt ROI at 1.

28. During the investigation of MCLS Staff Attorney Hewitt, the OIG determined that he "(1) accepted compensated civil cases from non-MCLSC clients; (2) accepted uncompensated civil case[s] for persons who were not close friends, family member, religious or charitable groups; (3) accepted compensated court-appointed Guardian Ad-Litem cases; (4) included MCLSC's name and address on pleadings for non-MCLSC clients; (5) used MCLSC's support staff to draft and sign pleadings for his private cases; and (6) did not remit to MCLSC attorney's fees earned as a court appointed attorney." Appendix A, Hewitt ROI at 2.

29. Pursuant to 42 U.S.C. § 2996f(a)(4), as implemented by 45 C.F.R. Part 1604, MCLS has adopted an outside law practice policy for full-time attorneys. As will be discussed more fully below, all full-time staff attorneys are required to abide by LSC regulations governing the outside practice of law.

30. As noted by the OIG, "MCLSC's policy also imposes stricter restrictions [than the LSC regulations] and requires full time staff attorneys to seek permission for any outside employment not just legal employment. In 2009 MCLSC revised its staff handbook, which included MCLSC's policy regarding the procedures and requirements to engage in an outside employment. MCLSC did not revise its outside employment policy; however, each member of MCLSC's staff was required to sign a statement of acknowledgment of receipt and basic understanding of the handbook. After numerous reminders to do so, Hewitt signed the statement over a year later on March 22, 2010." Appendix A, Hewitt ROI at pp. 2-3.

31. Whereas LSC regulations require MCLS attorneys to seek permission to engage in outside practice of law on behalf of a client, the MCLS Outside Employment Policy requires permission to seek any employment in addition to an employee's regular, full-time job with MCLS. The policy states that permanent full-time employees shall not engage in outside employment without prior written notice given to the Executive Director and all employees shall comply with LSC regulation 45 C.F.R. Part 1604. Based on its investigation, the OIG determined "that Hewitt provided legal representation to non-MCLSC clients. However, Hewitt never sought ED Buchanan's permission to assist private clients in civil matters and to accept court-appointed Guardian Ad-Litem as required by Part 1604 and MCLSC's policy." Appendix A, Hewitt ROI at 3.

32. During an interview with the OIG investigators, Mr. Hewitt acknowledged that each year he handled about three (3) to four (4) uncompensated cases for his family and friends and has also handled compensated court appointed cases. Mr. Hewitt further admitted that he knew of the requirement to request permission to engage in the outside practice of law, but he did not seek approval. Mr. Hewitt indicated that it was a mishandling of the policy on his part; while he may have informed his supervisor, Mr. Pittman, of his outside case work, he could not recall providing this notice. The OIG investigators indicated that although Mr. Hewitt averred he misunderstood the MCLS policy regarding outside practice/employment; that he could not explain how or why he misunderstood the policy. Appendix A, Hewitt ROI at 3.

33. In an interview with the OIG, the MCLS Executive Director, Sam Buchannan, stated that Mr. Hewitt never submitted a written request for approval of outside practice or

outside employment as required by MCLS policy. Mr. Buchanan did recall the Gulfport Managing Attorney, Mr. Pittman, having mentioning to him that Mr. Hewitt was handling his father's estate but he stated that he was not aware that Mr. Hewitt had other private clients. In that interview, Mr. Pittman said that Mr. Hewitt had told him that he was handling his father's estate.[4] Appendix A, Hewitt ROI at 3.

34. While the OIG reported there were allegations that Mr. Hewitt received compensation for the outside practice of law for representing private clients, which would be in violation of both the regulations and MCLS policy, Mr. Hewitt denied this and the OIG was not able to substantiate these allegations. Appendix A, Hewitt ROI at pp. 3-4.

35. In addition, Mr. Hewitt acknowledged to the OIG that he had been appointed by the Harrison County court as a *Guardian Ad Litem* in 2010 and 2011. In response to the OIG, Mr. Hewitt indicated he did not know how much he was paid; he further admitted that Mr. Buchanan was not aware of his appointments and that he did not ask permission to engage in outside employment when accepting these appointments. During its investigation, the OIG determined that in January 2011, Mr. Hewitt received $952.50 from Charlie Water's estate for *Guardian Ad Litem* Services. Appendix A, Hewitt ROI at 4.[5]

[4] LSC does not take the position that serving as executor of an estate is either the outside practice of law or outside employment, rather it acknowledges this statement in the context of the ROI as clarifying whether Mr. Hewitt had ever sought approval for the outside practice of law or outside employment. It appears that both Mr. Buchanan and Mr. Pittman had no knowledge of any outside practice/employment and were seeking to disclose any knowledge they may have had of such practice.

[5] *See also* the discussion of GAL as outside practice at footnote 1.

36. The OIG determined that Mr. Hewitt used MCLS resources and the program's address, and also identified the program with the representation of his private clients. Prior to the beginning of the on-site investigation, the MCLS Executive Director notified the OIG that he had gone to the Harrison County Clerk's office to review a sample of Mr. Hewitt's cases which had been identified by the OIG as potential private clients. Mr. Buchanan communicated via email that he was able to confirm that nine (9) cases were not MCLS cases and that for the most part all of the non-MCLS cases reviewed had MCLS's name and address under Hewitt's signature. Appendix A, Hewitt ROI at 4.

37. Mr. Buchanan stated that Hewitt was not given permission to identify MCLS as his employer on his private and court appointed cases. In utilizing MCLS's address on his pleadings, Mr. Hewitt misrepresented that his private clients were MCLS clients and subjected MCLS to liability for the cases. During his interview with the OIG, Mr. Hewitt stated he was the only person that drafted his private client pleadings but stated he did not realize he had utilized the program's name and address. Appendix A, Hewitt ROI at 4.

38. In addition to identifying the program with these cases, the OIG found that Mr. Hewitt used program resources to prepare these cases. Specifically, the OIG noted that "[o]ne of signatures was identified by MCLSC staff and Hewitt as the handwriting of a former MCLSC assistant. This indicated that Hewitt utilized MCLSC's support staff to draft pleadings for his private clients. Hewitt denied that he used MCLSC's resources or staff to prepare his private client pleadings and contended he prepared his own pleading for the most part; however, he admitted to allowing the former assistant to work on some of his MCLSC's client pleadings

and that she may have signed some of the MCLSC pleadings for him but not for his private cases." Appendix A, Hewitt ROI at 4.

39. Mr. Hewitt used MCLS resources to deliver legal assistance to his private law clients. Specifically, the OIG found that Mr. Hewitt did not take leave or document time to work on his private law clients.

39.1 During the period February 3, 2009 through December 12, 2009, the OIG found that Mr. Hewitt represented seven (7) non-MCLS clients and appeared in court on at least 11 separate days for hearings or to file documents in either Harrison or Jackson County, Mississippi. Moreover, the OIG reviewed the MCLS time and case management system and found that out of these 11 days, Mr. Pittman requested sick leave on only one (1) day, August 3, 2009, for eight (8) hours. There is no evidence in the time records that extra hours were worked to attend the 11 appearances or to draft and file pleadings for his private law clients. Appendix A, Hewitt ROI at 6.

39.2 During the period January 4, 2010 through December 1, 2010, the OIG found that Mr. Hewitt represented four (4) clients and appeared in court on at least 11 separate days for hearings or to file documents. Moreover, the OIG reviewed the MCLS time and case management system and found that out of these 11 days, Mr. Hewitt requested only two (2) hours of annual leave on July 15, 2010. There is no indication in the Hewitt 2010 time records that extra hours were worked to attend the 11 appearances or to draft and file pleadings for his private cases. Appendix A, Hewitt ROI at 6.

39.3 During the period January 7, 2011 through September 1, 2011, the OIG found that Mr. Hewitt represented eight (8) private clients and appeared in court on at least 14 days for hearings or to file documents. Moreover, the OIG reviewed the MCLS time and case management system and found that out of these 14 days, Mr. Hewitt requested leave on seven (7) of the days, for a total of 36 hours. The 36 hours requested included 19.5 hours of sick leave over a four (4) day period and the remainder was vacation leave. There is no indication in Hewitt 's 2011 time records that extra hours were worked to attend the 14 appearances or to draft and file pleadings for his private cases. Appendix A, Hewitt ROI at 6.

40. As a result of the ROI referral by the OIG, LSC Management, through OCE, asked MCLS whether it disputed the findings of the OIG and to provide a determination the cost of the resources used by Mr. Hewitt. *See* Appendix B. MCLS replied on June 15, 2012 and stated "MCLS does not disagree with the findings of the OIG relative to each ROI on Attorney Marcus Pittman and Attorney Arthur Hewitt. MCLS assisted in some limited aspects of the investigation and MCLS has no additional information or reason to contradict the findings." *See* Appendix C. Additionally, as requested, MCLS provided a schedule of attorney time spent by Mr. Hewitt on his outside practice. *See* Attachment to Appendix C. Having reviewed this schedule and the OIG ROI, LSC accepts the MCLS schedule and its calculation of $7,086.70. The OIG did not compute or estimate the indirect costs or any other costs used to support the outside practice and LSC does not propose to question such costs.

G. Arthur Hewitt, a Staff Attorney with the MCLS Gulfport Office, during the period 2009 through and including 2011, failed to properly record time in violation of LSC regulations.

41. In addition to the failure to comply with the MCLS Outside Practice of Law policy and the Outside Employment policy, Mr. Hewitt also failed to properly record time on an accurate and contemporaneous basis to the MCLS case and time management system as required by 45 C.F.R. Part 1635. *See* Appendix A, Hewitt ROI at pp. 5-7 and ¶¶ 39.1-39.3, above.

DISCUSSION AND ANALYSIS

LSC regulations provide uniform standards for the allowability of costs. *See* 45 C.F.R. Part 1630. Generally, expenditures by a recipient are allowable under the recipient's LSC grant or contract only if the recipient can demonstrate that the expenditures meet certain criteria. *See* 45 C.F.R. § 1630.3(a). Costs charged to a grant recipient's LSC fund may be disallowed, or questioned, upon a finding that there has been a violation of a provision of law, regulation, contract, grant, or other agreement or document governing the use of LSC funds, the cost is not supported by adequate documentation, or the cost incurred appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances. *See* 45 C.F.R. §1630.2(g). Under Part 1630, the recipient bears the burden of proving the allowability of a cost. *See* 45 C.F.R. § 1630.4.

When the OIG, the Government Accountability Office ("GAO"), or an independent auditor or other audit organization authorized to conduct an audit of a recipient has identified and

referred a questioned cost to LSC, LSC management shall review the findings of the OIG, GAO, or independent auditor or other authorized audit organization, as well as the recipient's written responses to the findings, in order to determine accurately the amount of the questioned cost, the factual circumstances giving rise to the cost, and the legal basis for disallowing the cost. LSC management may also identify questioned costs in the course of its oversight of recipients. *See* 45 C.F.R. § 1630.7(a). If LSC determines that there is a basis for disallowing a questioned cost, and if not more than five (5) years have elapsed since the recipient incurred the cost, LSC shall provide the recipient written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it. *See* 45 C.F.R. § 1630.7(b).[6]

> The LSC regulations provide three (3) bases for questioning a cost:
>
> (1) There may have been a violation of a provision of a law, regulation, contract, grant, or other agreement or document governing the use of Corporation funds;
> (2) The cost is not supported by adequate documentation; or
> (3) The cost incurred appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances. [7]

In all of the matters referred by the OIG on April 17, 2012, at least one (1) of these conditions exists.

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[6] The recovery of a disallowed cost does not constitute a permanent reduction in the annualized funding level of the recipient, nor does it constitute a termination of financial assistance under 45 C.F.R. Part 1606, or a suspension of funding under 45 C.F.R. Part 1623. *See* 45 C.F.R. § 1630.9(b).

[7] 45 C.F.R. § 1630.2(g). *See also*, §105 of OMB Circular A–133.

A. The Outside Practice of Law by the staff and management of MCLS.

The LSC Act bars all outside practice of law for compensation and severely restricts the non-compensated outside practice of law. Section 1007(a)(4) of the LSC Act states that:

> The Corporation shall...insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law and (B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation.

The prohibition and restriction in the LSC Act related to the outside practice of law has been promulgated at 45 C.F.R. Part 1604.

The prohibition[8] on the compensated outside practice is set forth at 45 C.F.R. § 1604.5:

> (a) Except as provided in paragraph (b) of this section and §1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.
> (b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in §1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

Moreover, § 1604.7(a), which applies to court appointments, and § 1604.4(c)(1), which applies to a newly hired attorney, do not apply in any instance of the present case.

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[8] The regulations do allow an implied exception to this prohibition, as explained in the preamble to the Final Rule:

> Although the statute prohibits all compensated outside practice, the exception in proposed paragraph (a) for work on cases held over from a previous private practice is justified under the general principle that neither LSC nor the recipient can interfere with an attorney's professional responsibilities to a client. Since the representation was undertaken before the lawyer became a legal services attorney, fairness dictates that the attorney should be permitted to take fees for completion of the work. This exception is carried over from the current rule.

See 68 Fed. Reg. at 67,376 (December 2, 2003).

The restrictions on uncompensated outside practice are that the full-time attorney[9] may engage in such activity if: (1) approved by the Director[10] (2) after a showing by the attorney and a determination by the Director that the activity is not inconsistent with the attorney's duties to the program's clients[11] (3) and is acting either on behalf of "him or herself, a close friend, family member or another member of the recipient's staff; [12] or "a religious, community, or charitable group" [13] or is participating "in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group."[14]

For purposes of Part 1604, both Mr. Pittman and Mr. Hewitt are considered to be full-time attorneys covered by the regulation. In order to rebut this presumption, MCLS will need to

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[9] The provision in the LSC Act and Part 1604 applies to full-time attorneys which is defined as:

> § 1604.2 Definitions.
>
> As used in this part—
> (a) Full-time attorney means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

[10] § 1604.4 Permissible outside practice.

> A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:
> (a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

[11] *See* § 1604.4(a) above.

[12] § 1604.4(c)(2).

[13] § 1604.4(c)(3).

[14] § 1604.4(c)(4).

show that the work of either one or both attorneys "...for the recipient is not supported in major part by funds from the Corporation."[15]

As full-time attorneys, each violated the restriction on outside practice by failing to obtain advance approval and also by failing to ensure that the outside representation was consistent with the attorney's responsibilities to the recipient's clients.

In addition to the afore-described violations, there are additional violations in that each attorney either identified their outside practice with the practice of law by MCLS, used MCLS resources, or both. The regulations set forth specific guidelines on the use of program resources for outside practice. The first provision only applies in the case of a "newly hired attorney" and does not apply here.[16] The second provision applies only in cases where the program has first followed all the above described steps but then further prohibits using any funds for "any activities for which the use of such funds is prohibited."[17] Since the conditions for allowing the

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[15] Footnote 1, from External Opinion 2000-1008, Letter of February 23, 2000 to Robert Hickerson which may be found on line at http://www.lsc.gov/lscgov4/EX_2000_1008_1604_Charitable_Org.PDF .

[16] Specifically, 45 C.F.R. § 1604.6 provides:

> (a) For cases undertaken pursuant to §1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited.

[17] Specifically, 45 CFR § 1604.6 provides:

> (b) For cases undertaken pursuant to §1604.4(c) (2) through (4), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

outside practice of law have not been satisfied, the use of any program funds or resources to support that work is prohibited.

B. The failure to keep required time records in a manner as specified by the regulations.

The LSC regulations require that recipient time records for attorneys and paralegals reflect the date as well as the amount of time spent on each case, matter, or supporting activity. *See* 45 C.F.R. Part 1635. These time records are to be recorded "contemporaneously and account for time by date and in increments not greater than one-quarter of an hour."[18] Moreover, all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities; there is no other category.[19] Each of these terms ("cases, matters, or supporting activities") are defined in the regulations and the definition of "supporting activities" is especially pertinent: "A supporting activity is any action that is not a case or matter, including management in general, and fundraising."[20]

The failure of both the managing attorney and a staff attorney to adequately maintain these time records is a violation of the LSC regulations. The requirements are not merely a regulatory requirement, but also protect attorneys who work after hours and on weekends. While

[18] § 1635.3(b)(1).

[19] § 1635.3(a)

[20] § 1635.2(d). *See* § 1635.2 for the definitions of cases and matters.

both Mr. Pittman and Mr. Hewitt claimed to have worked compensatory hours to offset time spent working on the outside practice of law during regular work hours, the OIG was able to find no evidence of this because neither attorney properly recorded time in the MCLS time management system.

C. MCLS Attorneys Pittman and Hewitt incurred expenses which were not reasonable and necessary for the performance of the grant, were not incurred in the performance of the grant, and were not adequately and contemporaneously documented.

The LSC regulations, at 45 C.F.R. § 1630.3, provide that expenditures by a recipient are allowable only if the recipient can demonstrate that the cost has met nine (9) specific requirements.[21] Among other things, these requirements provide that the recipient must demonstrate that the cost was actually incurred in the performance of the grant,[22] was reasonable and necessary for the performance of the grant, [23] and was adequately and contemporaneously documented in the financial records. [24] For each of these requirements, the recipient has the burden to demonstrate that the requirement was met. [25]

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[21] § 1630.3(a).

[22] § 1630.3(a)(1).

[23] § 1630.3(a)(2).

[24] § 1630.3(a)(9).

[25] § 1630.4.

By using MCLS resources to support their outside practice of law and their outside employment, MCLS attorneys Marcus Pittman and Arthur Hewitt diverted funds from the representation of eligible clients, which is the purpose of the LSC grant, for personal purposes. These personal purposes were not in any way reasonable and necessary expenses for the performance of the grant. Moreover, while they claimed to offset these personal purposes by devoting personal resources to MCLS clients, neither attorney was able to provide contemporaneous documentation of offsetting time.

Accordingly, LSC must question and disallow the expenditure of $21,424.35 of grant funds during the period 2009 to May 2011.

CONCLUSION

For the reasons set forth above, LSC finds that there is sufficient basis for disallowing the following costs that were charged to LSC funds: $14,337.65 for the outside practice of law by the Gulfport Managing Attorney, Marcus Pittman and $7,086.70 for the outside practice of law by Staff Attorney Arthur Hewitt and for their failure to maintain contemporaneous time records; altogether totaling $21,424.35.

In accordance with 45 C.F.R. § 1630.7(c), MCLS may, within thirty (30) days of its receipt of this Notice, respond to the undersigned with written evidence and argument to demonstrate that the questioned costs were allowable, or that LSC, for equitable, practical, or other reasons, should not recover all or part of the questioned amount, or that any recovery should be made in installments. If MCLS fails so to respond, the costs herein questioned,

totaling $21,424.35, will be disallowed and recovered, in equal amounts from MCLS' remaining grant checks for 2013.

Dated: February 15, 2013

LEGAL SERVICES CORPORATION

BY: Lynn A. Jennings, Vice President
Office of Grants Management

BY: William P. Sulik, Program Counsel
Office of Compliance and Enforcement

Appendices

Appendix A:	Memorandum of Referral and two Reports of Investigation ("ROI") for Cases 11-018 and 11-024, plus Exhibits (Exhibits provided in hardcopy only)
Appendix B:	April 27, 2012 letter from Lora M. Rath to Sam H. Buchanan
Appendix C:	June 15, 2012 letter from Sam H. Buchanan to Lora M. Rath, plus Schedule of Expenses

APPENDIX B

LSC

Legal Services Corporation
America's Partner For Equal Justice

BY EMAIL AND OVERNIGHT MAIL

May 17, 2013

Sam H. Buchanan, Jr., Executive Director
Mississippi Center for Legal Services
P. O. Drawer 1728
Hattiesburg, MS 39403-1728

Re: Notice of Questioned Costs issued on February 15, 2013

Interim Management Decision

Dear Mr. Buchanan:

Thank you for the Mississippi Center for Legal Services' ("MCLS") March 28, 2013 Response to the Notice of Questioned Costs referenced above. In its Response, MCLS acknowledged the factual basis for the Notice as set forth and asked to have the questioned costs set aside due to equitable, practical, and other reasons. Alternatively, MCLS sought to have a reduced amount recovered, indicating that the figures it previously provided were an over-estimate. Finally, MCLS asked that, if LSC does disallow costs, the recoupment be apportioned over the remaining grant year.

Background

The Notice of Questioned Costs, issued on February 15, 2013, questioned the expenditure of a total of $21,424.35 on the salary of two attorneys which was used to support their outside practice of law. The Notice was predicated on an investigation and subsequent referral by the Office of Inspector General ("OIG"). Specifically, the OIG determined that, in the Gulfport Office, Marcus Pittman, the Managing Attorney, and Arthur Hewitt, a Staff Attorney, regularly saw outside clients, without management approval, while working on MCLS time during the period 2009 to 2011. Most of this activity was in violation of Part 1604 of the LSC regulations and all was in violation of the MCLS Outside Employment Policy.

It was determined that, in 2009, Mr. Pittman represented 10 non-MCLS clients and appeared in court on at least 19 separate days. In 2010, Mr. Pittman represented 12 private clients and appeared in court on at least 23 separate days. In 2011, he represented 10 clients and appeared in court on at least 17 separate days. *See* ¶ 24 of the Notice. These activities were off-set by some leave taken as explained in the Notice and exhibits.

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Similarly, it was determined that in 2009 Mr. Hewitt represented seven (7) non-MCLS clients and appeared in court on at least 11 separate days. In 2010, Mr. Hewitt represented four (4) private clients and appeared in court on at least 11 separate days. Finally, in 2011, Mr. Hewitt represented eight (8) private clients and appeared in court on at least 14 separate days. *See* ¶ 39 of the Notice. These activities were off-set by some leave taken as explained in the Notice and exhibits.

Response to MCLS' plea to have the questioned costs set aside due to equitable, practical, and other reasons.

In response to the Notice, MCLS has several alternative pleas. The first is that:

> [I]t would be inequitable to recover from MCLS for the "unauthorized" activities of two of its former attorneys based on the nature of their acts. These acts not only violated LSC regulations, but were conducted without MCLS's knowledge and in violation of its policy as well.

Related to the plea of inequity is that the recovery of costs would be impractical. Specifically, given the reductions in funding due to sequestration and census reapportionment:

> It is inequitable and impractical to recover funds from MCLS considering the current climate of funding. MCLS, like other programs, will have to address the effects of the recent sequestration, which alone accounts for a loss of more than $141,000 from its current budget.

Response at 4.

Both the "equitable" and "practical" arguments are derived from 45 CFR §1630.7(c), which provides in relevant part,

> (c) Within thirty (30) days of receiving written notice of the Corporation's intent to disallow the questioned cost, the recipient may respond with written evidence and argument to show that the cost was allowable, or that the Corporation, for equitable, practical, or other reasons, should not recover all or part of the amount, or that the recovery should be made in installments.

I have carefully considered the MCLS Response and, as to the equitable and practical arguments, find no basis for setting aside the disallowance of the expenditure of these funds for purposes not covered by the grant of these funds. These arguments overlook the fact that the MCLS has an affirmative duty to ensure the proper expenditure of these funds as well as compliance with the outside practice and time keeping regulations. It is the duty of MCLS management to ensure that staff members are complying with the requirements of federal funding and the failure to exercise appropriate oversight does not excuse the program from complying. Accordingly, the request to set aside the questioned costs is denied.

Response to MCLS' plea to reduce the amount recovered.

Alternatively, MCLS argues that, in responding to OCE's request for a schedule of costs, it over-estimated the costs by providing an estimate based on the full-day of pay as opposed to the actual time.

In answer to an inquiry from the Office of Compliance and Enforcement ("OCE"), MCLS provided cost schedules of attorney time spent by both Mr. Pittman and Mr. Hewitt on their respective outside practice. For Mr. Pittman, MCLS based its calculations on a total of 59 days and valued the amount of this time at $14,337.65. *See* ¶ 25 of the Notice. For Mr. Hewitt, MCLS valued the amount of the time spent on the outside employment at $7,086.70. *See* ¶ 40 of the Notice. Neither figure included any overhead or other indirect costs, including benefits.

In the Response to the Notice, MCLS elaborates on its calculations:

> The inquiry requested that the schedule should clearly set forth the hours and days during which Pittman and Hewitt made appearances for outside clients without taking leave. Since the activities of the two attorneys were done without regard to MCLS policies and without MCLS consent and knowledge, it was impossible for MCLS to provide an accurate and specific schedule of unauthorized activities as noted in MCLS' response. MCLS relied upon the information provided to management by the OIG investigation, to determine the number of days in which both attorneys engaged in the outside practice of law.
>
> After reviewing management's request, MCLS defaulted to the full daily rate of pay for both attorneys in its determination of costs as we lacked any specific information as to how much time was spent on each activity.

The second plea, alluded to above, is that in responding to OCE's request for a schedule of costs, MCLS provided a schedule setting forth the cost of the time spent on the outside practice, it over-estimated the costs by providing an estimate based on the full-day of pay as opposed to the actual time. Specifically,

> ...it is more reasonable and likely that full days were not required for completion of the work and an assessment of cost based on the nature of the cases and disposition. More likely, if any amount is assessed, one third of the assessment would be a fairer determination of cost under the circumstances and a more reasonable cost, if any, for MCLS, to repay.

With respect to the plea to reduce the amount of the costs which are questioned, I believe there may be some merit in this argument, however, I have determined that MCLS has not met its burden of proof as required by 45 CFR §1630.4. Therefore, I am willing to toll these proceedings and give MCLS an additional 30 days from the date of this letter to provide documentation/evidence as to what the actual questioned costs should be.

If MCLS would like the amount recouped to be reduced, it will need to go through each of the instances of outside practice and prepare an itemized statement of the time spent on each instance of outside practice when the MCLS attorney should have been working for MCLS.

Alternatively, if MCLS is not willing or able to prepare a schedule setting forth both known and unknown costs, please advise me no later than May 23, 2013, so that I may enter a Final Management Decision by May 28, 2013. If I do not hear from you by June 18, 2013, LSC will issue a Final Management Decision by June 26, 2013.

Finally, with respect to the third request, to apportion the recoupment of the denied costs over the remaining grant year, this is so ordered. The amount to be recovered will be recouped by making deductions from the remaining monthly payments to MCLS in equal portions through the end of the current grant year.

Ordered:

Lynn A. Jennings, Vice President
Office of Grants Management

APPENDIX C

MISSISSIPPI CENTER FOR LEGAL SERVICES CORPORATION

serving *counties*

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July 1, 2013

Ms. Lynn Jennings
Vice President
Office of Grants Management
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

Re: Questioned Cost
Recipient No. 625071

Dear Ms. Jennings:

Thank you for the opportunity to provide an additional response to LSC's action in assessing questioned costs against MCLSC for the actions of former attorneys Marcus Pittman and Arthur Hewitt's in their unauthorized outside practice of law.

We have reviewed the OIG's submission and our time records for the two attorneys for the periods in question, being 2009-2011. We have assessed that the time records do not indicate sufficient information from which to garner the actual time spent on each outside practice activity on a particular day. It appears that with the exception for time spent to handle appointed position(s), the time spent according to court records was taken to either file an action, present a pleading/Order, or pay a fee. There is no indication that the time allocated would have involved an actual hearing or trial devoting all or any substantial part of the day. Therefore, we have recalculated the unapproved time to assess two hours being allocated to the particular event, which we assess as reasonable based on our experience.

I have enclosed our spread sheet indicating for each person, the following:

1. Documented receipt of payments
2. Number of appearances per year-per OIG report
3. Hourly rate for each attorney
4. Number of unauthorized hours-less any documented leave
5. Total Calculation of costs

Thank you for your consideration in this matter.

Sincerely,

Sam H. Buchanan, Jr.
Executive Director Administration

Enclosures

MARCUS PITTMAN

Year	Type of Case	Fees Received From	Client	Amount
2009	Guardianship	Estate of Angela Cunningham	Estate of Angela Cunnigham	$750.00
	Guardianship Court			
2010	Appointed	Jackson County Clerk's Office	Jackson County	$750.00
2010	Divorce	Richard Freeman	Richard Freeman	$750.00
2011	Guardianship	Jackson County Clerk Office	Jackson County	Requested $450.00
SUB-TOTAL				**$2,700.00**
2009	Divorce Master	Jackson County Chancery Court	Jackson County	$540.00
SUB-TOTAL				**$540.00**

LEAVE

		Hourly Rate	Number of non-MCLSC Appearances	Number of Leave Hours Requested	non-MCLSC Appearnces Hours (2hrs/appearance)	Total
2009	$	29.13	19		38	$1,106.94
2009	$	29.13		3.5		($101.96)
SUB-TOTAL						$1,004.99
2010	$	29.13	23		46	$1,339.98
2010	$	29.13		40		($1,165.20)
SUB-TOTAL						$174.78
2011	$	29.13	17		34	$990.42
2011	$	29.13		18		($524.34)
SUB-TOTAL						$466.08
SUB-TOTAL						**$1,645.85**
TOTAL						**$4,885.85**

ART HEWITT

Year	Type of Case	Fees Received From	Client	Amount
2011	Guardian Ad-Litem	Charlie Water's Estate	Charlie Water's Estate	952.5
SUB-TOTAL				**$952.50**

LEAVE

	Hourly Rate	Number of non-MCLSC Appearances	Number of Leave Hours Requested	non-MCLSC Appearnces Hours (2hrs/appearance)	Total
2009	$ 27.38	11		22	$602.36
2009	$27.38		8		($219.04)
SUB-TOTAL					$383.32
2010	$ 27.38	11		22	$602.36
2010	$27.38		2		($54.76)
SUB-TOTAL					$547.60
2011	$ 27.38	14		28	$766.64
2011	$27.38		36		($985.68)
SUB-TOTAL					($219.04)
SUB-TOTAL					**$711.88**
TOTAL					**$1,664.38**

APPENDIX D

LSC

Legal Services Corporation
America's Partner For Equal Justice

March 23, 2011

Ms. Salyria L. Gumms
Acting Executive Director
Capital Area Legal Services Corporation
200 Third Street
Baton Rouge, LA 70801

RE: Appeal of Questioned Costs

Dear Ms. Gumms:

This responds to your February 21, 2011 appeal of the January 20, 2011 Management Decision to disallow $714,261.92 in costs incurred by Capital Area Legal Services Corporation (CALSC) and paid for with Legal Service Corporation (LSC) funds during the calendar years 2006-2009.

I have reviewed the record in accordance with 45 C.F.R. § 1630.7(g). Pursuant to the authority given to me under 45 C.F.R. § 1630.7(f), I am modifying the Management Decision to disallow $487,619.68 in costs and to allow costs of $226,642.24. The reasons for my decision are set forth below.

Background

As a result of an audit and investigation conducted by the LSC Office of Inspector General (OIG), the OIG made a referral to LSC management regarding $913,767.77 in costs incurred by CALSC and paid for with LSC funds during the period 2005-2009. After reviewing the reports and materials collected by the OIG and additional materials provided to LSC by CALSC, the LSC Office of Compliance and Enforcement (OCE) issued a Notice of Intent to Question Costs Pursuant to 45 C.F.R. Part 1630 on November 15, 2010. In that notice, OCE questioned a total of $733,441.77 in expenditures made from 2006-2009. (The notice states that costs for expenditures made in 2005 were not questioned because they were incurred prior to the five-year time period for which costs could be questioned under the regulation.) CALSC provided a response on December 15, 2010, and, with LSC approval, a supplemental response on January 12, 2011. After considering CALSC's submissions, OCE issued a Management Decision pursuant to 45 C.F.R. § 1630.7(d) disallowing $714,261.92 of the originally questioned costs. On February 21, 2011, CALSC submitted an appeal to me pursuant to 45 C.F.R. § 1630.7(e).

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Phone 202.295.1500 Fax 202.337.6797
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Analysis

Payments for Executive Director's Salary

The Management Decision disallowed the entirety of the former Executive Director's salary for the period 2006-2009 -- a total of $485,000. The decision was based on the former Executive Director's failure to keep contemporaneous time records and on the inadequacy of reconstructed time records, created after the fact and submitted to OCE in the questioned cost proceeding, to document the activities of the former Executive Director. The Management Decision concluded that the reconstructed time records were not sufficiently specific in identifying what time the former Executive Director spent on legitimate program activities and what time he spent on non-CALSC business, such as the outside practice of law. The Management Decision also noted that the reconstructed records were, in some respects, demonstrably inaccurate.

CALSC makes four arguments against the disallowance of the former Executive Director's salary.

First, CALSC contends that "costs should only be disallowed for activities which themselves violate the LSC Act or Regulations." This reads Part 1630 too narrowly. Part 1630 specifies that costs are allowable only to the extent that they are "actually incurred in the performance of the grant or contract," were "reasonable and necessary for the performance of the grant," and are "allocable to the grant," *in addition to* being in compliance with all of the applicable laws and regulations. 45 C.F.R. § 1630.3(a). In any event, the failure to keep contemporaneous time records was in fact a violation of 45 C.F.R. § 1635.3(b), which requires that all time spent by attorneys be documented in the manner detailed in the regulation.

Second, CALSC suggests that failing to take required actions, as opposed to affirmatively engaging in prohibited actions, cannot be the basis for a questioned cost. I cannot accept that distinction. A failure to take a required action is as much a violation of the regulations as the commission of a prohibited action. By CALSC's logic, the analogous failure of a grant recipient to obtain a required citizenship attestation from a client could not be the basis for disallowing the recipient's costs in representing that client. Other information might inform the ultimate determination of whether the recipient's representation in that situation was permissible, but surely the failure to obtain the attestation form could be a basis for disallowing the cost.

Third, CALSC, relying on the preamble to LSC's 1997 final rule amending the cost standards regulation (Part 1630), states in its appeal letter that the "LSC Board of Directors has explicitly rejected use of timekeeping records for determining the allocability and allowability of costs." This is not correct. There is a difference between Part 1630's recognition that timekeeping records are not *required* to be used as the basis for a cost allocation and *prohibiting* their use as a basis for cost allocation. The very paragraph CALSC quotes in its appeal letter states that "time keeping records are one possible basis for cost allocations." 62 Fed. Reg. 68219, at 68222 (December 31, 1997). The Board made the same point in the preamble to the Part 1635 timekeeping rule:

> The timekeeping requirement, with its reference to 45 C.F.R. part 1630, was read by some commentators as creating a new requirement that all cost allocations for part 1630 purposes be calculated directly from time records kept pursuant to this rule. This is not correct. Part 1630 requires that costs be allocated to cost objectives (such as grants, projects, services or other actions) in accordance with the benefits received by those cost objectives. *Time records may well provide the basis for allocating costs among cost objectives.* Under both part 1630 and generally accepted accounting principles, however, in appropriate situations other bases remain acceptable as well, such as number of cases, number of employees, or total direct costs.

61 Fed. Reg. 14261, at 14263 (April 11, 1996)(emphasis added). Timekeeping records may be used to support cost allocations.

Finally, CALSC asserts that the former Executive Director was "engaged full-time" in CALSC business and that the entirety of his salary costs should therefore be allowed. Yet CALSC also acknowledges that he was engaged in the outside practice of law during the years in question. His reconstructed time records provide little or no detail as to the activities in which he was engaged. And on a number of occasions he made documented appearances in court on behalf of non-CALSC clients on days that his reconstructed records claim him to have been working on CALSC business.

On the facts presented, I cannot conclude the former Executive Director was engaged full-time on CALSC business from 2006-2009. He failed to keep any contemporaneous time records, and his after-the-fact reconstructions fall far short of documenting full-time engagement in program business. In some instances, as noted above, court records contradict his reconstructions.

Nevertheless, I do not believe it is appropriate to disallow all of the former Executive Director's salary costs for 2006-2009. During those years, LSC personnel had recurring dealings with him on CALSC business and had occasion to observe the work he was doing for the program. LSC personnel conducted an on-site Program Evaluation Visit to CALSC in 2008 and spoke to the former Executive Director about program business at that time. The Management Decision to disallow his salary costs was based on a deficiency in documentation, not on a finding that he did no work for CALSC. I am of the opinion that the very significant defects in documentation warrant disallowance of a substantial portion, but not all, of the former Executive Director's salary. I am therefore exercising my discretion under 45 C.F.R. § 1630.7(f) to modify the Management Decision and allow one-third of the salary expenditures, so that $323,010 the salary expenditures will be disallowed.

Payments to Consultants

The Management Decision disallowed $129,304.50 in payments made to two consultants. Of this total, $126,804.50 was for costs for one consultant and $2,500 was attributable to the other. CALSC contends that OCE erred in disallowing these costs.

The amount for the larger consultant contract was disallowed because the only documentation supporting the payments made was a set of invoices that did not contain any detail regarding the services the consultant performed. The amount for the second contract was disallowed because there was no evidence that the consultant ever delivered one of several services required by the contract.

CALSC admits that paying the first consultant on the basis of generic invoices was an "inadequate business practice." CALSC argues, however, that the first consultant's substantive work was demonstrated by his success in raising funds for the program. CALSC credits the first consultant for CALSC's receipt of $480,450 in additional funding during the period in question, including funds provided by both state appropriations and private donations.

A comparison of CALSC's fundraising results before and after the first consultant was retained in fact shows large increases in state appropriations and increases in private contributions. LSC has confirmed that the first consultant did perform the type of activities for which he was engaged. The Management Decision to disallow the consultant's costs was not based on a finding that he did no work; it was based on inadequate documentation of his costs. The deficiencies in documentation are significant and warrant a substantial disallowance of the consultant's costs, but I conclude, in the exercise of my discretion under Part 1630, that the record of fundraising results justifies allowance of one-half of this consultant's costs, or $63,402.25.

With regard to the second consultant, evidence submitted by CALSC documents some work by the consultant, even though the consultant did not deliver all of the services required by the contract. Again, the Management Decision did not conclude that the consultant provided no services. Under the circumstances, I will allow half of the cost of this contract, or $1,250.

I note that recent revisions to CALSC's financial manual should prevent the recurrence of the contracting practices at issue here.

In summary, I am exercising my discretion to allow one-half of the costs attributable to each of these two contracts and am modifying the Management Decision to disallow $64,652.25 in costs.

Payments for Leased Vehicle Expenses

The Management Decision disallowed $45,722.48 in lease payments and related down payments for a succession of leased vehicles. CALSC entered into a five-year lease for a 2007 Toyota Camry in 2006, then cancelled that lease to enter into a new lease in 2008, and did the

same again in 2009. Each new lease provided a newer car and resulted in higher payments than would have been required under the terms of the prior lease that CALSC cancelled. For none of the leases did CALSC seek the required prior approval from LSC.

CALSC admits that its failure to seek the required prior approvals provides an adequate basis for LSC to disallow the lease costs. CALSC argues, however, that I should exercise my discretion to allow some of the costs for the leases on the basis that, given the size of the program's service area, it is reasonable for CALSC to provide the Executive Director a leased vehicle for business purposes rather than to pay mileage reimbursement for business use of his/her own personal vehicle. CALSC contends that leasing the vehicles "saved" CALSC over $9,000 during the period in question.

Leasing a vehicle, if properly documented and approved in advance, could under some circumstances be a legitimate cost and financially preferable to reimbursing costs for use of a personal vehicle. Such a determination is necessarily fact-specific. Here, CALSC had a five-year lease in 2006 that would have cost CALSC $23,989.20 through the entire period in question. CALSC expended nearly twice that amount by cancelling the lease and entering into a new lease, and then by cancelling that lease and entering into yet a third one. CALSC's actions in entering into the 2008 and 2009 leases appear to have cost CALSC a significant amount of money for which no justification has been provided. Because CALSC did not seek approval of the 2006 lease and has not provided LSC with sufficient information to determine that the 2006 lease was financially beneficial at the time, I cannot approve the cost of even the first lease. I am upholding the Management Decision to disallow the entire lease costs of $45,722.48.

In addition, the Management Decision disallowed $13,199.53 in gasoline expenses because CALSC could provide no contemporaneous documentation regarding how much of that cost was attributable to appropriate business use of the car and how much was attributable to the former Executive Director's personal use of the car. CALSC suggests that it is "reasonable to assume that the former Executive Director would have logged a similar number of miles" as the current Acting Executive Director. But the current Acting Executive Director is the managing attorney of the Houma office, lives in Houma, and drives from Houma to CALSC's office in Baton Rouge, a distance of approximately 170 miles round-trip. The former Executive Director, by contrast, lives in Baton Rouge, would not have driven that distance, and could not have been reimbursed for any commuting costs. Because CALSC has provided neither reliable documentation nor any reasonable basis for estimating the cost of gasoline attributable to the former Executive Director's business travel, I am adopting the Management Decision to disallow $13,199.53 for gasoline expenses.

Payments for the Gonzales Property

The Management Decision disallowed $30,750 for payments of "rent" that CALSC paid itself in connection with its occupancy of the Gonzales property, which it owns. Essentially, CALSC is paying its mortgage on the building with LSC funds. CALSC acknowledges that this use of LSC funds creates an interest for LSC in the property and has documented that interest in a resolution of its board. CALSC points out correctly that if LSC were to disallow the costs and

if CALSC were to repay LSC the funds in question, LSC's interest in the property would be extinguished. (This would be true, however, only to the extent that CALSC has not continued to use LSC funds towards mortgage costs. CALSC appears still to be using LSC funds in this way.) Because CALSC would be permitted to use LSC funds for reasonable occupancy costs, and in light of CALSC's acknowledgement of LSC's interest in the property, I am modifying the Management Decision to allow the $30,750 in costs *on the conditions that*: (1) CALSC enter into a Property Agreement satisfactory to LSC which, among other things, identifies the specific percentage of the total mortgage payments made (and being made) with LSC funds; and (2) an Act of Correction satisfactory to LSC be duly prepared, signed, notarized and recorded, as required by Louisiana law, to amend the record of the conveyance to ensure that the correct percentage of LSC's interest in the property is recorded.

Payments for Meals and Entertainment

The Management Decision disallowed $9,170 attributable to spending on meals and entertainment by the former Executive Director and for which CALSC provided no documentation to support a legitimate business purpose. CALSC has not appealed the disallowance of these costs. Accordingly, I am upholding the Management Decision, and the full amount of these costs is disallowed.

Payments for Travel and Related Costs

The Management Decision disallowed $1,115.42 attributable to spending on travel and related expenses for which CALSC provided no documentation to support a legitimate business purpose. Although CALSC's appeal does not state specifically that the program does not contest the disallowance of these costs, the appeal does not address these costs and CALSC advances no argument for allowing them. Accordingly, I am upholding the Management Decision, and the full amount of these costs is disallowed.

Conclusion

In accordance with the provisions of 45 C.F.R. Part 1630, I am disallowing $487,619.68 in expenditures of LSC funds made by CALSC during 2006-2009.

CALSC is currently on month-to-month funding pending the results of a recompetition of the grant for its service area. LSC anticipates that the recompetition will be complete by June 2011. Under these circumstances, collecting the disallowed costs in a lump sum immediately, or even over the short period of time before the recompetition is resolved, could cripple CALSC's ability to remain viable, leaving the client population in its area without service. Consequently, LSC will hold collection of the amount owed in abeyance pending the outcome of the recompetition. If CALSC is successful in the recompetition and receives the grant, LSC will

recoup the funds through reductions of grant checks dispersed over the life of that grant. If CALSC is not chosen, CALSC will be required to pay back the funds due to LSC as part of its grant close-out.

Sincerely yours,

James J. Sandman
President